Supreme Court, U. S.
FILED
MAY 14 1979
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1819

NORMAN VAUGHN, LARRY J. BROUSSARD AND FREDDIE BROUSSARD, *Petitioners*,

v.

VERMILION CORPORATION, *Respondent*.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI FILED JUNE 23, 1978
CERTIORARI GRANTED FEBRUARY 21, 1979

INDEX TO APPENDIX

	Page
Docket Entries	1a
Explanatory Note	3a
Original Petition in Vermilion Corporation v. Norman Vaughn	4a
Answer of Norman Vaughn to Original Petition	8a
Motion for Summary Judgment in Vaughn Case	11a
Affidavit of Murphy Sellers in Vaughn Case	12a
Affidavit of John Donohue	15a
Exhibits Attached to Mr. Donohue's Affidavit	18a
Deposition of John Donohue	19a
Exhibits Attached to Mr. Donohue's Deposition	53a
Affidavit of Vaughn, Broussard and Broussard in Opposition to the Motion for Summary Judgment	54a
Judgment of the Trial Court	55a
Court of Appeal Opinion in Vaughn v. Vermilion Corporation	57a

DOCKET ENTRIES

1. Vermilion Corporation v. Norman Vaughn, Docket 35948, 15th Judicial District Court, Vermilion Parish, Louisiana, was filed on October 12, 1976

2. Vermilion Corporation v. Larry Broussard, Docket 36983, 15th Judicial District Court, Vermilion Parish, Louisiana, was filed on October 12, 1976

3. Vermilion Corporation v. Freddie Broussard, Docket 35982, 15th Judicial District Court, Vermilion Parish, Louisiana, was filed on October 12, 1976

4. Answers of Vaughn, Broussard and Broussard in all three cases were filed on March 21, 1977

5. Motion for Summary Judgment of the Vermilion Corporation in all three cases was filed in the State Trial Court on May 16, 1977

6. Motion for Summary Judgment on all three cases was decided via "Minute Entry" of June 7, 1977. That Minute Entry, which constitutes the finding and opinion of the Trial Court in all three cases, appears at Page A-1 of the "Petition for Certiorari" filed by Relators in this matter.

7. Motion to Consolidate and Order granting same was executed and filed in all three cases on June 22, 1977

8. The formal Judgment of the 15th Judicial District Court, Parish of Vermilion, Louisiana, in all three cases was signed and filed on June 27, 1977, and appears at Page A-5 of the "Petition for Certiorari" filed by Relators in this matter.

9. Motion and Order for Appeal in all three cases to the Court of Appeal, Third Circuit, State of Louisiana, was executed and filed on June 27, 1977

10. The Opinion of the Court of Appeal, Third Circuit, State of Louisiana, in all three cases was filed on February 6, 1978

11. The Opinion of the Court of Appeal is reported at 356 So.2d 551, La. App. 3rd Cir., 1978

12. Timely Application to the Supreme Court of Louisiana for the issuance of a Writ of Certiorari or Review was denied by that Court on March 27, 1978, and the Docket Entry evidencing that denial is set forth at Page A-18 of the Petition for Certiorari filed by Relators previously in this matter.

13. Petition for Certiorari to this Court in Docket No. 77-1819 was filed on June 23, 1978

14. Writ of Certiorari was granted by this Court on February 21, 1979

EXPLANATORY NOTE

The petitions of Vermilion Corporation in its virtually identical suits against all three Relators in the State Trial Court [Docket Nos. 35948, 36982 and 36983, 15th Judicial District Court, Parish of Vermilion, Louisiana], the answers of all three Relators therein, the Motions for Summary Judgment filed by Vermilion Corporation in all three cases, the Affidavits of Murphy Sellers and John Donohue in support of those Motions for Summary Judgment in all three cases, the Affidavits of Relators filed in opposition to those Motions for Summary Judgment, and, generally, the Opinion and Judgment of the State Trial Court, the Opinions of the Court of Appeal, Third Circuit, State of Louisiana, in all three cases [Docket Nos. 6258 through 6260], and the Docket Entry in all three cases in the Supreme Court of Louisiana are either completely identical or so nearly identical as to be without probative difference.

Accordingly, in this Appendix, Petitions, Answers, Motions, Affidavits, Minute Entries, Judgments, and the Opinions of the Court of Appeal, Third Circuit and Docket Entries of the Supreme Court of Louisiana are reproduced only with regard to *Vermilion Corporation v. Vaughn.* The records of all three consolidated cases are before the Court, but reference to this Appendix and to the record of the Vaughn case would in all inquiries reveal the entire contents of all matters relevant to the consideration by this Court on the merits.

15TH JUDICIAL DISTRICT COURT

NUMBER: 35948

VERMILION PARISH, LOUISIANA

VERMILION CORPORATION

VERSUS

NORMAN VAUGHN

PETITION FOR PERMANENT INJUNCTION AND DAMAGES

The petition of VERMILION CORPORATION, a corporation organized under the laws of the State of Delaware and authorized to do business in the State of Louisiana, with respect, represents that:

1.

Petitioner is the Lessee of and is in possession of certain lands in Vermilion Parish, Louisiana, which lands are fully described in the copy of the lease and amendments attached hereto and marked Exhibits "A", "B", and "C".

2.

Petitioner, pursuant to the terms and provisions of said lease and amendment, and under the authority therein granted is entitled to bring this action in the place and stead of the Lessor named in said lease and amendment, its successors or assigns.

3.

Norman Vaughn, a resident of Vermilion Parish, Louisiana, has without permission of your petitioner, trespassed on the lands of petitioner and more particularly in the private canals located within said lands, despite the fact that said lands are properly posted with "No Trespassing, Vermilion Corporation" signs, showing the properties and canals to be subject to the exclusive possession of petitioner.

4.

All of the canals in question were built and have been maintained by either petitioner, its lessor, their predecessors, their agents, assigns or sublessees.

5.

Said trespass by defendant, Norman Vaughn, was willful and knowing on his part and occurred on several occasions and more particularly on or about June 26, 1975, in a canal at a point approximately one-fourth (¼) of a mile North of Exxon Company Well No. 21, located in Section 26, Township 16 South, Range 1 West.

6.

Again, on or about July 18, 1975, defendant, Norman Vaughn, trespassed at a point approximately one-eighth (⅛) of a mile East of Exxon Company Well No. 46, located in Section 29, Township 16 South, Range 1 East.

7.

Defendant again trespassed on or about September 14, 1975, at a point located between two bridges constructed across what is known as the Humble Canal, located in Section 31, Township 16 South, Range 2 East.

8.

Defendant again trespassed on or about September 24, 1975, at a point approximately one-half (½) miles East of a cattle crossing on the Humble Canal located in Section 26, Township 16 South, Range 1 East.

9.

On each of said occasions, defendant, Norman Vaughn, was issued a warning and notice by Murphy Sellers, the Field Superintendent and Warden of petitioner in the

presence of petitioner's employee, Earl Harden. Said Warning being given to defendant in the form of legal notices, copies of which are attached hereto and marked Exhibit "D", for identification.

10.

At the time of each trespass and at other times not herein specified, defendant has engaged in commercial fishing and/or shrimping in petitioner's canals resulting in the harvest of large catches of shrimp and fish of great value.

11.

Defendant's actions and defiance of ample warning has directly and indirectly encouraged others to trespass and engage in commercial fishing, all to plaintiff's detriment.

12.

Additionally, defendant has caused petitioner to suffer damages past, present and future, due to the illegal and unauthorized fishing in a sum exceeding $250,000.00, all of which will be more accurately determined on the trial hereof.

13.

Despite the warnings given to defendant by the Warden, Murphy Sellers, the said Norman Vaughn continues to trespass and fish on the several canals subject to the control and possession of petitioner causing the damages enumerated.

14.

The defendant thus violated the rights of petitioner by this act of trespassing and petitioner is entitled to an injunction enjoining and prohibiting the said Norman Vaughn from trespassing on the property and canals within the property in control and possession of petitioner, pursuant

to the above mentioned leases and for the damages in excess of $250,000.00, all of which is to be more fully shown at the trial hereof.

WHEREFORE, petitioner prays that the defendant be duly cited to appear and answer this petition and after due proceedings had, there be judgment herein in favor of petitioner Vermilion Corporation, and against the defendant, Norman Vaughn, decreeing the above acts of defendant to constitute a trespass of the rights of petitioner and enjoining, restraining and prohibiting Norman Vaughn from trespassing on any property and canals within the property of petitioner as described in the leases mentioned in paragraph 1 above, and further, that said defendant be assessed with all proven damages and costs of court.

And for all general and equitable relief, etc.

COOPER & SONNIER

BY: /s/ CHARLES R. SONNIER
Attorneys for Petitioner
121 East St. Victor
P. O. Box 519
Abbeville, LA 70510
(318) 893-6766

15TH JUDICIAL DISTRICT COURT

NUMBER: 35948

PARISH OF VERMILION, LOUISIANA

VERMILION CORPORATION

VERSUS

NORMAN VAUGHN

ANSWER

NOW COMES NORMAN VAUGHN, defendant herein, and for answer to plaintiff's petition, says that:

1.

Article 1 is denied for lack of sufficient information to justify a belief therein.

2.

Article 2 is denied.

3.

Article 3 is denied as written, Norman Vaughn further showing that the canals and other waterways referred to in this Article and at other points in plaintiff's petition are navigable waters, and navigable waters of the United States, and subject to a paramount right of use for and on behalf of the public and citizens of the United States and are not subject to private ownership or control.

4.

Article 4 is denied for lack of sufficient information and justify a belief therein.

5.

Article 5 is denied as written.

6.

Article 6 is denied as written.

7.

Article 7 is denied as written.

8.

Article 8 is denied as written.

9.

Article 9 is admitted as to the facts alleged therein.

10.

Article 10 is denied as written.

11.

Article 11 is denied as written and denied for lack of sufficient information to justify a belief therein.

12.

Article 12 is denied.

13.

Article 13 is denied as written.

14.

Article 14 is denied.

15.

Plaintiff's acts in attempting to restrain use by petitioner of any canals or waterways mentioned herein, and plaintiff's act in filing and maintaining this lawsuit, are both prohibited by the Rivers and Harbors Act, 33 U.S.C. 401, et sequittur, in that such attempts by plaintiff consti-

tute an obstruction to the navigable capacity of the navigable waters of the United States.

16.

Apart from any such statutory violations, plaintiff's attempt to restrain or impair or prohibit, via lawsuit or otherwise, the use by plaintiff or any others of the canals or other bodies of water mentioned herein is unlawful due to the character of said waters as navigable waters of the United States not subject to private ownership or dominion, but instead burdened with a paramount easement of use in favor of the public. All waterways mentioned in this lawsuit are subject to tidal fluctuations and/or are navigable in fact based upon their actual and potential uses as highways of commerce and fisheries.

17.

For the above reasons, plaintiff is without cause or right of action herein and has failed to state same in its petition. Plaintiff is also without cause or right of action as to its claim for damages based upon severance of shrimp and other fishes from its alleged private waters as, by specific provision of R.S. 56-311 and 312, said shrimp and fishes are not subject to private ownership, dominion or control.

WHEREFORE, defendant prays that this answer be deemed good and sufficient and after due delays and proceedings, there be judgment herein in favor of defendant and against plaintiff, rejecting plaintiff's demands with prejudice and at its cost.

MOUTON, ROY, CARMOUCHE, HAILEY, BIVINS & MCNAMARA

BY: /s/ JOHN K. HILL
John K. Hill, Jr.
P. O. Drawer Z
Lafayette, La. 70502

15TH JUDICIAL DISTRICT COURT

NUMBER: 35,948

PARISH OF VERMILION, LOUISIANA

VERMILION CORPORATION

VERSUS

NORMAN VAUGHN

MOTION FOR SUMMARY JUDGMENT

Petitioner, VERMILION CORPORATION, through undersigned attorneys, and on suggesting to the court that defendant has filed his answer to the petition herein, and that plaintiff is entitled to a summary judgment against defendant, granting an injunction as prayed for in the petition, on the grounds that the pleadings and depositions on file, and the sworn affidavits annexed hereto or to be annexed hereto and served upon defendant, show that there is no genuine issue as to material fact, and that the questions presented herein are strictly a matter of law, and that mover is entitled to a judgment in his favor as a matter of law;

IT IS ORDERED BY THE COURT, that NORMAN VAUGHN, defendant herein, show cause on the 31st day of May, 1977, at 10:00 o'clock a.m., why summary judgment should not be rendered in favor of plaintiff as prayed for in plaintiff's petition herein.

THUS DONE AND SIGNED on this 16th day of May, 1977.

/s/ CARROL L. SPELL
Carrol L. Spell
Judge

15TH JUDICIAL DISTRICT COURT

NUMBER: 35,948

PARISH OF VERMILION, LOUISIANA

VERMILION CORPORATION

VERSUS

NORMAN VAUGHN

AFFIDAVIT OF MURPHY SELLERS

BEFORE ME, the undersigned Notary for the Parish of Vermilion came and appeared MURPHY SELLERS who after duly being sworn did depose and say:

That he is employed by VERMILION CORPORATION, petitioner in the above entitled lawsuit as its head warden to supervise use of its property including its canals, and that he has been employed by VERMILION CORPORATION and its predecessor, Louisiana Furs Corporation for a period of over thirty-five years. He is familiar with the canal system on the lands formerly owned by Louisiana Furs Corporation and now leased to VERMILION CORPORATION. He is aware of the fact that these canals on the lands leased to VERMILION CORPORATION were constructed by private corporations in connections with drilling operations on the property.

Appearer further declared that he has personal knowledge that the defendant in this lawsuit, NORMAN VAUGHN, has without the permission of VERMILION CORPORATION, trespassed on the lands and the canals located within said lands, on several occasions, and more particularly on or about June 26, 1975 in a canal at a point approximately one-forth of a mile north of Exxon Company Well #21, located in Section 26, Township 16 South, Range 1 West. Again, on or about July 18, 1975, defendant NORMAN VAUGHN trespassed at a point of approximately one-eighth

of a mile east of Exxon Company Well #46, located in Section 29, Township 16 South, Range 1 East. Appearer declared that he again saw the defendant trespassing on or about September 14, 1975, at a point located between two bridges constructed along what is known as the Humble Canal located in Section 31, Township 16 South, Range 2 East, and on or about September 24, 1975 he saw defendant at a point approximately one-half mile east of a cattle crossing on the Humble Canal located in Section 26, Township 16 South, Range 1 East. On each of these occasions he issued a written warning and notice to NORMAN VAUGHN that he was trespassing. These warnings were given to defendant in the form of legal notices, copies of which are attached to the petition in the lawsuit.

Appearer further declared that at the time of each trespass mentioned above and at other times not specified herein, he has seen NORMAN VAUGHN engaging in commercial fishing and/or shrimping operations in the canals leased to VERMILION CORPORATION resulting in the harvest of shrimp and fish of obvious value. Appearer further states that there are numerous "No Trespassing" signs posted throughout the property and along the entire canal system. To the best of his information there are at least four hundred or more such signs posted along the canals leased to VERMILION CORPORATION.

Appearer is further aware of the fact that VERMILION CORPORATION leases numerous tracts of property to hunters, granting them hunting privileges on the property and the use of the canals, to trappers granting them trapping rights on the property and use of the canals, and to commercial fishermen and alligator hunters, granting them the right to conduct specific activities on the property and use the canals, that VERMILION CORPORATION and its predecessor corporation Louisiana Furs, has been in constant control and supervision of the canals as long as he can remember,

and that he has personally evicted numerous persons who had no permission to use said canals in the past several years.

And finally, appearer declared that he has viewed the map of the property leased to VERMILION CORPORATION containing the numbers one through fifteen, together with the photographs which have been attached to the affidavit of Mr. John Donohue, and to the best of his knowledge those photographs properly depict only some of the scenes along the canals.

/s/ MURPHY SELLERS
Murphy Sellers

15TH JUDICIAL DISTRICT COURT

NUMBER:

PARISH OF VERMILION, LOUISIANA

VERMILION CORPORATION

VERSUS

NORMAN VAUGHN

AFFIDAVIT OF JOHN DONOHUE

BEFORE ME, the undersigned authority, personally came and appeared JOHN DONOHUE who after being duly sworn did depose and say:

That he is Vice-President, General Manager, and a member of the Board of Directors of Vermilion Corporation, petitioner herein, and has been associated with Vermilion Corporation and/or its predecessor corporation, Louisiana Furs Corporation, since 1958. Appearer declared that he is thoroughly familiar with the lands and canals leased to Vermilion Corporation by Louisiana Fur Corporation, (which has now merged with Exxon Company, U.S.A.), and that he is aware that these canals were constructed by private corporations with private funds, for the most part by Louisiana Fur Corporation, Humble Oil and Refining Company, Exxon Company, U.S.A., Vermilion Corporation, and Union Oil Company of California, usually in connection with drilling operations or mineral explorations on the lands leased to Vermilion Corporation.

Appearer further declared that the property and canals within the area designated on the attached map, which was marked D-1 for identification with his deposition previously taken, has been under the continuous control, possession, and supervision of Vermilion Corporation and its predecessor corporation, Louisiana Furs Corporation, since the

1920's, and that the use of the canals on said subject property has always been subject to the permission and supervision of petitioner and its predecessor corporation.

Appearer further declared that for decades Vermilion Corporation and Louisiana Furs Corporation has granted leases on the subject property to various hunters, trappers, alligator hunters, and fishermen, granting them specific privileges on said property and the right to use the canals in connection with those premises. A copy of a hunting permit normally used in connection with said hunting leases is attached hereto and marked as A-17. Of the 125,000 acres under lease to Vermilion Corporation, approximately 120,000 acres are presently under lease to hunters, trappers, alligator hunters and fishermen and these persons pay for their leases and the right to use said canals. Vermilion Corporation has maintained over four hundred "No Trespassing—Vermilion Corporation" signs along the canals which are the subject of this lawsuit, and has continuously employed persons to supervise activities in those canals. On numerous occasions Vermilion Corporation has had to exercise its control by prohibiting persons from entering and using the canals. Vermilion Corporation has on several occasions successfully pursued injunction suits prohibiting persons from entering its property including the canals.

Appearer further declared that he has reviewed the map attached hereto and identified as A-16, containing numbered locations one through fifteen, and that he has further reviewed the corresponding photographs attached hereto and marked for identification as A-1 through A-15, and he further declares that he is the person who took these photographs and that they represent a true picture of the scenes at some of the entrances to some of the larger canals in Vermilion Corporation's canal system, and that they show many of the "No Trespassing" signs which are posted

throughout the property. The photographs were taken at locations one through fifteen on the map in question, and more particularly in the locations described as follows:

Photograph number one was taken at a Union Oil Well location at the Stomp entrance; photograph number two was taken at the entrance to a Humble location canal from Freshwater Bayou; photograph number three was taken at the entrance to a Union #1 well canal from South Freshwater Bayou; that photograph number four was taken at the entrance to Union well canal #2 at South Freshwater Bayou; that photograph number five was taken at the north bank of the Humble Pecan Island canal near Freshwater Bayou; that photograph number six was taken at the south bank of the Humble-Pecan Island canal near Freshwater Bayou; that photograph number seven was taken at the trunkline pipeline canal at its intersection with the Humble canal, south bank; that photograph number eight was taken at the entrance to the Pan American pipe line canal from the Humble canal, on its south bank; photograph number nine was taken at what is known as the Union canal-Columbia Gulf-Humble canal crossing, on the north bank; that photograph number ten is the west view of the Humble canal-Union canal intersection; that photograph number eleven was taken at the Columbia Gulf barge terminal-south, along what is known as the Union canal-Section 14; that photograph number twelve was taken at a Humble-Exxon location, canal well #10, north view; that photograph number thirteen was taken at the Humble canal at the Humble landing at Pecan Island; photograph number fourteen was taken at the intersection of what is known as the Humble canal and the Dewit Canal, south view; that photograph number fifteen was taken along what is known as the Humble Canal.

/s/ JOHN DONOHUE
John Donohue

EXHIBITS ATTACHED TO MR. DONOHUE'S AFFIDAVIT

Exhibits attached to Mr. Donohue's Affidavit appear at Pages 60 through 64 of the original record in the Vaughn case on file in this court.

DEPOSITION OF JOHN DONOHUE

SUIT NO. 35, 948
15TH JUDICIAL DISTRICT COURT
PARISH OF VERMILION, LOUISIANA

VERMILION CORPORATION
VS.
NORMAN VAUGHN

SUIT NO. 36,983
15TH JUDICIAL DISTRICT COURT
PARISH OF VERMILION, LOUISIANA

VERMILION CORPORATION
VS.
LARRY BROUSSARD

SUIT NO. 36,982
15TH JUDICIAL DISTRICT COURT
PARISH OF VERMILION, LOUISIANA

VERMILION CORPORATION
VS.
FREDDIE BROUSSARD

APPEARANCES:

FOR THE PLAINTIFF:
CHARLES SONNIER, ESQ.
JOHN ORTEGO, ESQ.
COOPER & SONNIER
221 East St. Victor
Abbeville, Louisiana 70510

FOR THE DEFENDANTS:

JOHN KNOX HILL, JR., ESQ.
MOUTON & ROY
Post Office Drawer Z
Lafayette, Louisiana 70502

EXHIBITS ATTACHED TO DEPOSITION:

"D-1"—A document which purports to portray the property boundaries of the leasehold, as well as points of interest concerning activity on the property.

"D-2"—A document which purports to portray the canal system of the Exxon Company, USA, oil and gas field, known as the Pecan Island Field, Vermilion Parish.

"D-3"—Copy of a Humble property map. (Not attached)

"D-4"—Entry numbers to servitude instruments.

STIPULATION

It is stipulated by and between counsel for the plaintiff and counsel for the defendants as follows:

That the deposition of JOHN DONOHUE shall be taken upon oral examination, pursuant to the Louisiana Code of Civil Procedure, before Vernelle P. Herbert, General Reporter and Notary Public, duly commissioned and qualified in and for the Parish of Lafayette, Louisiana, beginning at 2:15 o'clock, P.M., May 10, 1977, at the offices of Cooper and Sonnier; 121 East St. Victor, Abbeville, Louisiana;

That the parties hereto waive all formalities in connection with the taking of this deposition, including the reading and signing thereof by the witness, except the swearing of the witness and the reduction of the testimony to typewriting;

That all objections except those pertaining to the form of the question, need not be entered at the time of the taking of this testimony, but may be reserved until such time as this deposition or any part hereof may be offered in evidence, with the same effect as though the evidence

had been taken and given on the trial of this case in Open Court;

Further, by agreement of counsel, that the witness may be sworn by the reporter.

PROCEEDINGS

JOHN DONOHUE, called at the instance of the defendants, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. HILL.

Q. Your name is John Donohue?

A. That is correct.

Q. What is your professional address, sir?

A. Post Office Box 554, Abbeville.

Q. And your occupation?

A. I'm a C.P.A. in public practice.

Q. All right. And what is your connection with the Vermilion Corporation presently?

A. I am presently the vice president, general manager, treasurer, and a member of the Board of Directors.

Q. How long have you held the positions of V.P. and general manager of the Vermilion Corporation?

A. Since September 1, 1971.

Q. Were you affiliated with the Vermilion Corporation prior to that time?

A. Yes, I was.

Q. In what capacity, sir?

A. I served as treasurer, auditor and treasurer of Vermilion Corporation on August 1, 1958.

Q. Continuously to September, '71?

A. That's correct.

Q. Who was the general manager who preceded you?

A. Mr. J. Mark Hebert.

Q. Is Mr. Hebert still here, is he alive?

A. Yes, Mr. Hebert is still living. He lives in Lafayette.

Q. How long was he the general manager of the Vermilion Corporation?

A. Approximately, forty-five (45) years.

Q. So, there have only been two (2) of you?

A. Prior, there was a general manager, prior to Mr. Mark Hebert. Well, now, of course, I'll have to amend that to this extent, that Vermilion Corporation was formed on April or March 28th of 1959——1958, excuse me. March 28, 1958. And prior to that time, Mr. Hebert served as general manager of Louisiana Furs Corporation, which was a predecessor corporation. Vermilion Corporation succeeded Louisiana Furs Corporation.

Q. What, if any, affiliation with, or relationship to the Exxon Corporation or its predecessors did Louisiana Fur have?

A. Affiliation?

Q. I use that term in its broadest sense.

A. None to my knowledge, other than——well, I would have to say to this extent, that the predecessor to——which is now Exxon Company, USA, was Humble Oil and Refining Company. And Humble Oil and Refining Company held mineral leases on Louisiana Fur property.

Q. What, if any, relationship presently exists between the Vermilion Corporation and the Exxon Company?

A. Vermilion Corporation operates on a ninety-nine (99) year service lease granted by Louisiana Furs Corporation. Louisiana Furs Corporation was merged into Humble Oil and Refining Company, and later merged in with Exxon Corporation.

Q. So, Louisiana Fur owned the land that Louisiana Fur leased to Vermilion Corporation, and then, Louisiana Fur was merged into the predecessor of Exxon Company, USA?

A. That is correct.

Q. All right. Can you describe for me, orally, verbally, the various bodies of water to which the Vermilion Corporation's petitions in these three (3) lawsuits refer?

A. They refer to the canal system on the leasehold on the property.

Q. Generally speaking, that would be from Freshwater Bayou to the Dewitt Canal east to west, and from the gulf to, roughly, Pecan Island north and south?

A. That would be——no. That would be from the West Cheniere Tiger Canal on the east to Rollover Bayou on the west and north and south from the Gulf of Mexico north to the Intracoastal Canal. In the area of Intracoastal City, we have some land that are north——located north of the Intracoastal Canal.

Q. Am I correct that the canal system of which we are primarily speaking in these three (3) lawsuits, although not exclusively lying in the area that I described a few moments ago, does primarily lie in that area; that is, once again, from Freshwater Bayou to the Dewitt Canal, and from the gulf to Pecan Island?

A. And the question was does the canal system lie principally?

Q. Yes, principally and primarily?

A. Well, I'd say, the bulk of it is in that particular area, but there's quite an extensive canal system outside of that area.

Q. Okay. Do you have with you, today, maps or plats of which depict the entire canal system of which you speak?

A. Yes, I do. The entire canal system——I think it would encompass most of the canal system.

Q. Let me see.

A. It would consist of two (2) plats, really. The area you were speaking of really would be one (1) area of this particular property map, which is a——that's a visual aid map that I have prepared for my stockholders for points of interest on the property.

OFF THE RECORD.

A. Now, these are all numbered. All of the canal system within the area you're speaking of, they're all numbered well location canals.

MR. HILL.

Q. Okay. The document I am going to mark "D-1," which you have handed to me, tell me, if you will, what that purports to portray, sir.

A. That purports to portray the property boundaries of the leasehold, as well as the points of interest concerning activity on the property.

OFF THE RECORD.

MR. HILL.

Q. Okay. Mr. Donohue, in connection with what I believe you just told me, Exhibit "D-2" purports to portray what?

A. That portrays the canal system of the Humble Oil ——Exxon Company, USA, oilfield, oil and gas field, known

as the Pecan Island Field, Vermilion Parish. That's just Humble Oil and Refining Company——I mean, it's Exxon Company, USA, a division of Exxon Corporation.

Q. All right. Do you have additional maps or plats which further reflect the existence of canals on the leasehold?

A. I have one (1) other map, which is a property map, prepared by Exxon Corporation——Exxon Company, USA. This shows all the section numbers, townships, range lines. That is the current property map of the property. It also shows ownerships.

OFF THE RECORD.

MR. HILL.

Why don't we——we're all among friends——just call that current Humble property map Exhibit "D-3," and not attach the original, and simply have Mr. Donohue provide the court reporter with a copy of it to be attached to the deposition.

You can just provide it directly to Mrs. Hebert.

Q. Among Exhibits "D-1," "D-2," and "D-3," the entire canal system referred to in these three (3) lawsuits is at some point portrayed?

A. Well, I'd have to qualify that to the extent that current drilling locations are now being dredged, and are continuously being dredged month by month. In other words, this is not an update. The closest thing to the update would be the——I think you called it "D-1" of the Exxon Field. Exxon is not the only producer on the property. We have Union Oil Company of California, we have Robert Mosbacher, we have Amoco, we have Austral, we have other companies that are continuing to enlarge the canal system.

Q. Yes.

A. On a current basis. So, I don't have an update that I can say shows every existing canal on the property at the moment.

MR. SONNIER.

Let me make an observation, not an objection for the record, but witness is being asked to identify the land area with reference to the canal system. I think the best evidence of that would be the pleadings themselves and the attachment to those pleadings, which include the areas that are being claimed by the plaintiffs as being under their supervision and control and ownership, and subject to the injunction being sought. And with that preface, I will tell John he can continue answering that question.

A. The point I was making was this is an active oilfield, oil and gas field in this whole area, and then, the canals are continuously being dredged for access to the nearest drilling locations.

MR. HILL.

Q. All right. In Article 5 of the suit against Norman Vaughn, it is alleged that Mr. Vaughn's trespass, alleged trespass, took place in the canal "at the point approximately one-fourth mile north of Exxon Company, Well No. 21, located in 26:16:1." Can you tell me when that canal was dredged, dug or developed, or that portion of the canal?

A. I would have to refer to the map to see the date of the completion of those wells to answer that question specifically. 21, that canal was extended from F-1 up to and across the little hunting canal, the little Louisiana Fur Canal. If you'll look at 21, there should be the day of completion of that well on it. I would have to say it was done in the late '60s. The expansion of the canal system has been a continuing one, and it shows what exact dates would be, with that reference of being possible.

Q. Generally speaking, the——and realizing that it doesn't purport to be precise, we're probably talking about the late '60s for that portion of the canal that I mentioned, or that was mentioned in Article 5, Well 21, in Section 26:16:1.

A. As a matter of fact, it hadn't been dredged at the date of printing of this property map. Yes, it had. There it is right here, 21. I was looking at the wrong place. May, '57 was date of completion, on extension from F-1.

Q. I just want to make sure I follow you correctly. That canal was completed in May, '57?

A. No, the well was completed.

Q. The well was completed.

A. So, that canal would have been——the duration of a well is normally about three (3) months. So, the canal would have been dredged just prior to spudding in the barge on that location.

Q. In Article 6 of the petition, there's mention of an alleged trespass in one-eighth mile east of Exxon Well No. 46, located in 29:16:1. Tell us approximately when that portion of the canal system was developed.

A. Well, that portion is part of the older canal system, which dates back to 1943, at which time Humble Oil and Refining Company drilled Well No. 3. And then, of course, that was the area he was observed in, just adjacent to that Well No. 3——it was between 3 and 46.

Q. All right. Going on to Paragraph 7, the Humble Canal is the portion of this thing running south from Broussard's Landing?

A. The Humble Canal is the entire——(Interrupted)

Q. I realize that, but let me just read you Paragraph 7. "Again trespassed on or about September 14, '75 at a point

located between two (2) bridges constructed across what is known as the Humble Canal, located in Section 31:16:2."

A. Well, I think there we're referring to the Humble main canal, access canal, from which the various location canals branch off. That canal system would consist of starting at Pecan Island coming down from the Humble Landing at Pecan Island——now Exxon Landing, and continuing south to a Y juncture, which junctures off to the southeast and southwest, southeast over to Freshwater Bayou, southwest over to the Well 21 juncture, back to the little canal. That would be the Humble main——what we refer to as the Humble main canal system, off of which all of these——and, of course, this evolved as various locations were being drilled, new well sites. This was not all done at one time. This has been an evolving canal system.

OFF THE RECORD.

MR. HILL.

Q. The portion of the canal referred to in that paragraph was developed approximately when, sir?

A. Between the two (2) bridges, the reference?

Q. Yes.

A. That was done in 1942. That part of the Humble main canal——I mean, Humble canal system was dredged in 1942.

Q. Okay. The next paragraph refers to an alleged trespass "at a point approximately one-half mile east of a cattle crossing on the Humble Canal, located in 26:16:1." Approximately when was that portion of the canal developed, sir?

A. You'll have to repeat that.

Q. One-half mile east of a cattle crossing on the Humble Canal, located in 26:16:1——Section 26, Township 16 South, Range 1.

A. That would have been dredged at the same time as ——in 1942.

Q. All right. In Article 5, the Larry Broussard suit, it says, "Reference to an alleged trespass at a point designated as Location 22, located in Section 31, Township 16 South, Range 1 East," when was the portion of the canal system referred to in that paragraph developed, sir?

A. Let me locate that.

Q. It's Location 22, Section 31, Township 16.

A. That would have been done in approximately 1946, 1947, in that time.

Q. Okay. The next one, Well Location 21, Section 26, Township 16 South, Range 1 East, when was that portion developed?

A. 1 East or 1 West?

Q. 1 West. I'm sorry. Excuse me.

A. Section 26——(Interrupted)

Q. 26:16:1 West, Location 21.

A. Location 21. That's the 1957 date.

Q. Okay. All right. In Article 5 of the Freddie Broussard petition, in that article there is mention of an alleged trespass "in a canal at a point designated as Humble Canal, Location 13, located in Section 33, Township 16 South, Range 1 East," when was that portion of the canal system developed?

A. In '47 and '48. 1947 and '48.

Q. All right. Do I assume correctly that all of the locations which I've just asked you about, which, I believe, constitute all locations mentioned in all three (3) petitions,

are parts of canals built by, or caused to be built by Humble?

A. By Humble?

Q. Yes. By Humble, or someone in privy with Humble?

A. Yes. Because Union of Cal participated in some of that canal construction. Union Oil Company of California.

Q. Within the boundaries of the leasehold, shown in Exhibit "D-1," can you tell me the earliest dates at which any canals, to your knowledge, were developed by Louisiana Fur or Humble?

A. The earliest dates?

Q. Yes, sir.

A. It would have been in the 1945——no, it was prior to that, 1942 period.

Q. Is there any portion of the entire canal system developed by Louisiana Fur and/or Humble, and/or Exxon, and/or the Vermilion Corporation——is any portion of that canal system within the boundaries of the leasehold shown in Exhibit "D-1," which is hermetic, or enclosed; that is, which is not ultimately connected to some other waterway? Do you follow what I'm saying?

A. Well, there are many dead end location canals.

Q. Dead end, though, on only one (1) end, correct?

A. Correct.

Q. In other words, there is no portion of the canal system referred to in Exhibit "D-1" in which is involved in this lawsuit that is dead ended, or enclosed on both ends, if you will, is that correct sir?

A. On both ends?

Q. Yes, sir.

A. No. Not enclosed on both ends, no. You would mean by that a dammed off location canal?

Q. Yes, I think, correct, or, in essence, an artificial lake, I suppose, in other words, a completely enclosed waterway.

A. Well, there are some——I'll have to——there are one (1) or two (2) that are dammed off location canals, yes. For example, there's a Kilroy location in '61, this was dammed off here.

Q. All right. That's in Sections 25 and 36, Township 16 South, Range 1 East, correct?

A. Correct.

Q. Those——that location, to your knowledge, is not directly involved in this lawsuit, involved from the standpoint of there being an allegation of a trespass in that area?

A. No.

Q. All right. Any others that fit that description?

A. That are dammed——that would be dammed off locations?

Q. Yes.

A. That just comes to my mind right offhand, that particular one. We have pipeline canals that are dammed off, yes. Not location canals, but pipeline floatation canals that are dammed off.

Q. Are any of those, to your knowledge, directly involved in this lawsuit; that is, from the standpoint of there having been an alleged trespass on them by any of the three (3) defendants?

A. No.

MR. SONNIER.

Let me make another observation. Of course, the pleadings and the request for whatever remedy the Court is to

grant is set forth in the petition and the prayer, regardless of what this witness has indicated. In other words, John, our contention is the Vermilion Corporation has control over the entire land area shown in that "D-1" that you have, whether it's enclosed, or otherwise.

MR. HILL.

I understand.

OFF THE RECORD.

MR. HILL.

Q. Has there been any discussion between the Vermilion Corporation and the Corps of Engineers recently about dredging, or possible dredging of the Dewitt Canal?

A. No.

Q. To your knowledge, does the Corps have any plan or intention to do so?

A. Not to my knowledge. I haven't been contacted about it by anyone about dredging the Dewitt Canal.

OFF THE RECORD.

MR. HILL.

Q. Could you tell us what is known as the Dewitt Canal?

A. The Dewitt Canal is a canal that was dredged by Louisiana Furs to connect the little Mulberry Canal northward to the little Louisiana Fur Canal, which were the original access canals over the property, and that was for trapping and hunting access over the marsh.

Q. All right. And the Dewitt Canal was developed approximately when, sir?

A. In——about in 1945.

Q. There was in the approximate area of the Dewitt Canal once a natural waterway or bayou, known as the little Freshwater——little Rollover Bayou, was it not?

A. Yes, sir. There was a little coulee out there called Little Freshwater Bayou. It was a drainage coulee that meandered from the coast in a northwesterly direction up into a lake area. It was there. It is all silted in now, filled in.

Q. Do you know the cause of its being silted in, filled in?

A. Well, the general conditions along our coast, which is that of accretion caused by the westerly current and bringing the silt from the Atchafalaya River westward, is causing the silting up of all the canal openings into the gulf off of our coast.

Q. To your knowledge, did the development of the Dewitt Canal itself have anything to do with the silting up and the enclosure of that coulee to which you refer?

A. No, it would not have had any effect on that, to my knowledge.

Q. Do you know whether or not that little coulee course northerly as far as Pecan Island, or the latitude of Pecan Island?

A. I wouldn't know that for a fact. The best of my knowledge, it drains the lake areas located in 16 South 1 West. It meandered this way. It came in at about this point, it meandered, and crossed, and came over into a low area in here. It was some lakes at that time. And then, it course northward into this lake area. And it drained those lakes into the——(Interrupted)

Q. To your knowledge, in other words, the northern most lake area in which it coursed was in the southeast quartan of Township 16 South, Range 1 West, approximately, correct?

A. Yes. That whole Township.

Q. Okay. 16:1?

A. Yes.

Q. Do you know the——or can you tell us the approximate size of that little canal?

A. The Dewitt Canal?

Q. The natural canal or coulee that once existed in that area.

A. No, I can't give you the dimensions on it. I have observed it on Toban aerials what remained——well, an aerial that was taken in 1958 by Humble at that time, at the time of acquisition of the property and the merger with Louisiana Furs. And at that time, it's not too well defined. It aided the Rollover Bayou. It was a drainage that aided Rollover Bayou and drainage for that area.

Q. To your knowledge, was it ever used by vessels of any description for any purpose?

A. Well, about the only vessel I could say ever used it were trappers in perogues using it for trapping in that area. Dewitt Morgan, after whom the canal was named——of course, canal names have a funny way of originating, you know. That happened to be where Mr. Dewitt Morgan, one of our trappers was trapping at the time and for many years, and the canal becomes known as the Dewitt Canal.

Q. Freshwater Bayou, am I correct that it once coursed northerly from the gulf, the natural Freshwater Bayou?

A. Unh-huh (yes).

Q. Well, it yet courses northerly from the gulf almost to Pecan Island, does it not, the natural waterway?

A. The natural waterway, no. The natural waterway is all filled in.

Q. Did it once course northerly from the gulf to Pecan Island, to the eastern terminus or tip of Pecan Island, if you know?

A. Yes, it did. It terminated at what we refer to as Boat Point on the eastern tip of the front ridge of Pecan Island.

Q. All right. While the situation existed, to your knowledge, was the natural Freshwater Bayou used for any navigational purposes, and I don't mean navigational in a legal sense, I mean just factually?

A. To my knowledge, I would have to——I don't have knowledge of that, and I would assume that it was.

Q. How old are you, Mr. Donohue?

A. I'm fifty-three (53)——will soon be fifty-three (53) this month.

Q. By whom was the Freshwater Canal developed?

A. The Freshwater Canal?

Q. Yes, sir.

A. What's presently existing as Freshwater Canal was developed by the Corps of Engineers, under a servitude that was granted by Exxon—well, Humble at that time. I'm not sure if it was Humble or Exxon at that time. And Vermilion Corporation donated a servitude for the construction of Freshwater Bayou Canal.

Q. Do you have a copy of the instrument whereby that was done?

A. I have a copy at the office. I don't have it with me.

Q. Okay. Could you also forward a copy of that to Mrs. Hebert to attach to the deposition? This is a servitude instrument.

MR. SONNIER.

Is it lengthy, John?

A. It's fairly lengthy. I just got a copy of it one (1) or two (2) years ago from the Courthouse.

MR. SONNIER.

Most of those things cover——you know, because it covers all of the——(Interrupted)

A. The property description is quite lengthy.

MR. SONNIER.

We don't mind getting one. It's a public record.

MR. HILL.

If you could just simply provide the court reporter with the entry number, and call that entry number "D—4".

A. All right.

MR. SONNIER.

I will provide it for the reporter.

It is agreed between the parties to the deposition that it be incorporated by reference.

MR. HILL.

Q. All right. The Freshwater Canal which is on the map which is Exhibit "D—3," show me, if you will, the Freshwater Canal.

A. The Freshwater Canal is outlined where it flows into the Gulf of Mexico.

Q. And that's in 24:17:1?

A. 24 and 17:1. And it courses northward to the lock side in Section 13——17:3:1 East. All right. And then, it flows northward to Section 31: 16 South: 2 East, and it takes a northeasterly bend—how far do we want to go? Up to its ——(Interrupted)

Q. All the way to its terminus.

A. All right. 15——Section 22 in 15 South, 2 East, at which point it takes a further northeasterly bend to Intracoastal City, to the Intracoastal Canal, in the vicinity of Intracoastal City.

Q. What, if you know, existed——the Corps developed that canal, or improved it, or whatever, approximately when, sir?

A. In the period between 1964 and 1968 at which time it was opened.

Q. What existed along the course of that present canal prior to the Corps working that area?

A. Prior to the Corps dredging——completion of the Freshwater Bayou Canal, there existed the Six Mile Canal, what was known as the Six Mile Canal, which started at Schooner Bayou, our old Intracoastal waterway, and proceeded south to a juncture with Belle Isle Bayou.

Q. All right. So, that was generally between 10 and 11 ——Township 15 South, Range 2 East, down to the southern portion of, roughly, Section 4:16:2, is that right, sir?

A. That would be right.

Q. All right. Go ahead, sir. I interrupted you.

A. Then, from that point south there was the Belle Isle Canal, which flows southward to its juncture with Freshwater Bayou.

Q. And the Belle Isle Canal, the juncture of that with, I suppose, the natural Freshwater Bayou?

A. With the old Fresh——natural Freshwater Bayou.

Q. All right. On approximately——on the 16:2 and 17:2 Section line in the area of 31:16:2, is that correct, sir.

A. That would be right. Well, 28:17:2.

Q. Okay. Freshwater Bayou is natural. What about the Belle Isle Canal?

A. The Belle Isle Canal was dredged to connect the Six Mile Canal with Freshwater Bayou.

Q. Dredged by whom?

A. It was dredged by Humble Oil and Refining Company and Union Oil of California.

Q. When?

A. This was done in approximately 19——either late ——it would be late '41 or '42.

Q. The Six Mile Canal was developed by whom, sir, and when?

A. That was developed by Union Oil of California and the Humble Oil and Refining Company at the same——approximately the same time, in 19——in late '41 and '42 period——1941 and '42 period. That was the time when the oil activity started on the property.

Q. Well, that's what I was going to say. Am I correct that those two (2) dredging operations were, if not the first, among the very first in this area?

A. Yes. The Six Mile Canal and Belle Isle Canal.

Q. Six Mile Canal and Belle Isle Canal were, as a matter of fact, navigated by what sort of vessels, sir?

A. Navigated by oilfield vessels, drilling barges and support vessels, towboats and tugboats and crew boats, and by Louisiana Furs' work boats.

Q. And the combination of Six Mile, Belle Isle, and the old Freshwater Bayou made the entire area from the old Intracoastal to the gulf navigable for those vessels?

A. I wouldn't say they made it completely navigable to the gulf, because Freshwater Bayou was silting up from its juncture with Belle Isle Canal to the gulf.

Q. Was there ever a time when that entire area was navigable by the work of industrial vessels that you just mentioned?

A. From the juncture to the mouth of the gulf?

Q. Yes.

A. Not to my knowledge.

Q. What vessels were——or what sorts of vessels was that entire area navigable?

A. It was navigable by oilfield work vessels from the Schooner Bayou juncture with Six Mile Canal to the Freshwater Bayou juncture with Belle Isle Canal by work boats entirely, to the point. Now, from the juncture of Belle Isle Canal with Freshwater Bayou and southward to the gulf, I really couldn't tell you what type of vessels could navigate that, if any.

Q. Are you aware of that waterways formed by the joining of the three (3) waterways that we have been speaking of——are you aware of that ever having been used as a mail route, or a route to move cattle north and south?

A. Movement of cattle north and south, or a mail route?

Q. Yes.

A. I wouldn't be familiar with it as a mail route, but as a cattle movement route, yes, our cattle lessees were permitted to move their cattle through that canal system by barge, our grazing lessees.

Q. Now, there are two (2) landings at Pecan Island that is commercial landings, are they not—Broussard's and Hazel's?

A. Yes, sir.

Q. And they're both at headwaters, if you will, of your canal system, right?

A. Yes. Headwaters? I don't know just what you mean by that.

Q. Perhaps that's a misnomer. Perhaps you should just show me on Exhibit "D—3" where Hazel's and Broussard's Landings are.

A. Hazel's Landing is marked clearly in Section 34.

Q. All right. That's 34:15:1.

A. 1 East.

Q. All right.

A. And Broussard's Landing is located at the juncture of the Humble Canal with the front ridge on Pecan Island in Section 8 in——(Interrupted)

Q. 16:1?

A. Yes.

Q. 16:1 East. How long, to your knowledge, have Hazel's Landing and Broussard's Landing been in existence?

A. Broussard's Landing has been there for quite some time. I just couldn't give you an exact year on it. Hazel's Landing was developed relatively early——I mean, pardon, not early, late. Hazel's Landing was developed in about '59, or thereabout——'58 or '59.

Q. Okay. And Broussard's, some time before that?

A. Broussard's, some time prior to that.

Q. When Hazel's Landing was originally opened, to your knowledge, were its physical facilities located on land owned by the Vermilion Corporation, or Humble, or Louisiana Fur, or on the other hand, by lands owned or leased by the developer of the land?

A. Well, it was developed on lands owned by the Segrera heirs——R. S. and I. W. Segrera heirs.

Q. Was Louisiana Fur, the Vermilion Corporation, Humble or Exxon in any way privy to the development of that landing, to your knowledge?

A. Not to my knowledge, at all.

Q. How about Broussard's Landing, that was developed on land owned at that time by whom, to your knowledge?

A. By Mr. Hester Broussard.

Q. All right. Were any of the corporations I just mentioned, the Vermilion Corporation, Et Al, in any way privy to that landing's development?

A. Not to my knowledge. I know that Humble Oil and Refining Company leased some ground from the Broussard ——from Mr. Lester Broussard for the development of the Humble Landing.

Q. Okay. That's on the west side of the landing, and the Broussard physical premises are on the east side of the landing.

A. Yes.

Q. Was there ever a time when, to your knowledge, Louisiana Fur——and I mention all these names, simply because, Mr. Donohue, I don't have the relevant dates of change-overs in my mind. Was there ever a time that Louisiana Fur, Humble, Exxon, or the Vermilion Corporation sought to restrain or prohibit the operations of Hazel's Landing or Broussard's Landing?

A. The operation of the landings?

Q. Yes, sir.

A. Not to my knowledge.

Q. Both of those landings are——(Interrupted)

A. Now, you say sought to restrain, is that correct?

Q. Yes, restrain, or prohibit, or interdict, whatever one wants to say, or has there ever, to your knowledge, been any intent to tell the people in so many words, "You can't operate your landing here because this is our private waterway."?

A. Not to my knowledge.

Q. The area of your canal system, generally, from the Dewitt Canal to Freshwater Bayou west to east and Pecan Island to the gulf north and south, is navigated, in fact, by what sorts of vessels predominantly owned by whom ——owned, or leased, or chartered by whom?

A. Well, it's navigated predominantly by vessels belonging to Exxon Company, USA, and vessels belonging to Vermilion Corporation.

Q. And what sorts of vessels are those?

A. They are work boats and passenger——and patrol boats, and passenger carrying boats. It's also navigated by our lessees, our hunting lessees, during the hunting season, during the waterfowl hunting season. It's navigated by our trappers who trap the lands, during the trapping season. It's navigated by our alligator hunters who hunt alligators during the hunting season.

Q. You say our alligator hunters. In what sense do you mean our, sir?

A. In that we contract with the trapper to hunt alligators in designated areas, on the property.

Q. Designated areas as far as hunters and trappers outside the boundaries of the waterways.

A. Including the waterways. Most of the alligators——(Interrupted)

Q. Well, in other words, lands within and without the waterways.

A. Correct. Most of the trapping and the alligator hunting is done in the canal system.

Q. Since Broussard's Landing and Hazel's Landings have been open for business, to your knowledge, do members of the public, from sport fishermen, for example, use those landings to put boats in and take them out——(Interrupted)

A. Yes, sir.

Q. ——without the permission of Exxon, the Vermilion Corporation, Humble, or Louisiana Fur?

A. Does the public sportsmen use the two (2) landings?

Q. Yes.

A. Yes, they do.

Q. From Broussard's Landing, using your canal system in conjunction with other waterways, one can go south and thence west and thence south in a small vessel to the gulf through the Dewitt Canal, is that correct, sir?

A. Not presently, no.

Q. Well, up until a couple of weeks ago, could one do that?

A. Well, the Dewitt Canal is silted up at the mouth, outward for a distance of about two hundred or three——oh, I'd say, five hundred yards. A bar has been built.

Q. In the gulf itself, when did that, by the way, as a matter of curiosity, when did that bar reach a stage of development that navigation by small vessels became impossible, approximately?

A. Oh, it's been a gradual build-up over a long period of time, and just by traffic, they were able to cut their way through it.

Q. Is it to the point now that small boats simply can't make it through at all, or do they still manage by force to get through there?

A. I would say it's impassable at the present time.

Q. I gather from your testimony that situation of complete impassibility has not lasted too very long; that is, rather recently——(Interrupted)

A. The complete impassability would have occurred within the last six (6) months, I would say, to a year.

Q. One can go from Broussard's Landing south and thence east and ultimately back to the south and to the gulf by the Freshwater Canal and Bayou or northerly to the Intracoastal Canal, is that correct, sir?

A. That's correct.

Q. One can generally do the same——perform the same functions from Hazel's Landing, can one not?

A. That's correct.

Q. Are there any other——and this is a loaded word, and I know it, but prominant natural or artificial waterways other than the gulf and the Intracoastal Canal that portions of your canal system connect with?

A. You'll have to repeat that, Mr. Hill.

Q. Okay. Other than the gulf and the Intracoastal Canal and Freshwater Canal, are there any other prominant natural or artificial waterways with which any portion of your canal system connects?

A. Well, we have some canals that connect with the old Intracoastal Waterway into White Lake.

Q. All right. Any others?

A. No. We have some——I'll have to retract that statement. We have a canal system that connects with the West Cheniere Tiger Canal and into Vermilion Bay.

Q. We've been speaking of a canal system, realizing that there are many dead ends. Are we, nevertheless, speaking of one unitary system; that is, there is not one system of cuts and canals that are hermetically sealed from another, or another system of canals? Do I make myself at all clear?

A. I think so, Mr. Hill. Of course, you know, these canals are all developed as the most expeditious means and way to get to a drilling location. So, they all connect to some other canal, which in turns connects to another canal, which eventually leads to Intracoastal City or the Gulf of Mexico.

Q. So, it is, in effect, ultimately a unitary system in that sense, am I correct?

A. Well, I don't know what you mean by unitary there again, but I can only answer it the way I did.

Q. The development of that canal system, has there ever been any arrangement, or connection, between the Vermilion Corporation, Humble, Exxon, and Louisiana Fur on the one hand, and the Corps of Engineers on the other, other than the easement agreement which you've already referred to?

A. Yes. Humble Oil and Union Oil Company of California, the oil producers on the property, have dealings with the Corps of Engineers relative to obtaining permits for dredging these location canals, these oilfield location canals, and for the placement of pipeline on the property.

Q. Is it generally true that there has been a——from the time this canal system was first begun to be developed in the early '40s, is it generally true that on each occasion that any portion of it was developed, a permit was secured from the Corps of Engineers to do so?

A. Repeat that question, please, Mr. Hill?

Q. Is it true that from the time this canal system was begun to be developed, that at each stage, or each point in

the development, a permit from the Corps of Engineers was secured before doing so?

A. I don't think so. You know, the——I think it's only been in recent years that the oil companies have made application to the Corps of Engineers for permits for dredging oilfield location canals.

Q. Simply in the last four (4) or five (5) years?

A. Since 1974.

Q. Prior to that time, were such permits sought and obtained, to your knowledge?

A. I don't have knowledge of that, Mr. Hill. I can't answer that.

Q. Other than——forgetting pipelines for the moment, to your knowledge, from the development——from the time of the beginning of the development of the canal system in the early '40s until 1974, on each occasion of dredging or development of portions of the canal system, was there any permit sought from any agency or subdivision of the United States or State government before doing so?

A. There again, I can't answer the question for the oil companies that were developing the canal system. And I just can't tell you whether——what the procedure was at that time.

Q. Is there, to your knowledge,——(Interrupted)

A. I would have to assume that any work done on natural waterways would have——permits would have been obtained, which was, at that time, to my knowledge, the limitation of the Corps of Engineers' jurisdiction.

Q. To what extent is this canal system effected by tidal fluctuations?

A. Tidal action was increased substantially by the dredging of the Freshwater Bayou Canal, complete hydrology

of that whole project area was effected by the dredging of the Freshwater Bayou Canal. The Freshwater Bayou Canal was dredged to initial depth of twelve (12′) feet by a hundred and twenty-five (125′) feet width. This replaced the canal system of essentially——with dimensions of essentially forty (40′) feet wide by six (6′) feet deep. So, this changed the hydrology quite substantially with the dredging of the Freshwater Bayou Canal. Tidal action was changed at that time. Prior to that time, there was no great fluctuation in tidal action over the property.

Q. I certainly don't want to quibble with you about adjectives, but was there prior to the development of the Freshwater Canal some tidal fluctuation, or some degree of effect by tidal fluctuations in the canal system, generally?

A. Oh, yes. There was a tidal action in the canal system, not as severe as there is at present, as a result of the dredging of the Freshwater Bayou.

Q. To your knowledge, has there ever been any agreement or arrangement of any sort whereby Louisiana Fur, Humble, the Vermilion Corporation, and/or Exxon, on the one hand, and the U.S. or State governments on the other, whereby all or any part of the canal system was deemed to be private, and subject to private control by any of those four (4) corporations, or their privies?

A. With what other party?

Q. In other words, any agreement or arrangement between the private corporations involved, the Vermilion Corporation, Louisiana Fur, Humble, and Exxon, with either the Federal or State government, or both, on the other hand, to the effect that this canal system was and was to remain the subject of private dominion and control, private dominion and control meaning a private dominion,

and subject to the control of the four (4) private corporations, or any one of them.

A. Yes. If you read the servitude, I think that's certainly implied, not explicit, in the servitude agreement, relative to the donation of the grant, the donation for the servitude for the Freshwater Bayou Canal. And, certainly, the State Department of Public Works has never attempted to assert otherwise, or the Corps of Engineers, or any other Federal or State agency. They've always sought permission before entering upon the property and have followed the usual courtesies, I'm happy to say that, and have sought permission before entering on the property or any of the waterways, except for wildlife enforcement, of course, which is different.

Q. But the only agreement or arrangement or understanding to that effect, to your knowledge, would be embodied in the easement agreement which you mentioned, which again was in connection with the development of the Freshwater Bayou from Intracoastal to the gulf.

A. Well, that wouldn't be the only one, Mr. Hill. We've made many donations. I don't know of any other concern that has made donations to the extent that the group you speak of has made to the development of the area for the general public welfare. But in addition to the grant of servitude for the Freshwater Bayou Canal, a grant of servitude was made for the construction of highway to Pecan Island. Also, for the construction of the Intracoastal Canal. I think in each instance you'll find the instruments clearly set forth the privacy of the canals, not a part of the project servitude. And more recently, another grant of servitude for donation of a road to Freshwater Bayou Locks from Pecan Island. All these servitudes have been by donation.

Q. The land for the development of the Intracoastal Canal through this area was donated by Humble or Louisiana Furs?

A. Louisiana Furs. That would date back to Louisiana Furs.

Q. Do I understand correctly that the Vermilion Corporation as lessee claims to own the shrimp and other fishes in this canal system?

A. We claim to have the fishing rights in the canal system, Mr. Hill.

Q. I see. Where does Mr. Hebert live in Lafayette?

A. He lives at 100 Canterbury Street.

Q. Okay. The depth and width from Broussard's Landing to the point at which that north/south portion of the canal forks east and west, that depth and width is approximately what, sir?

A. Well, initially, those were sixty by eight foot canals. Now, they have been maintained by Exxon, formerly Humble, over the years, to where I couldn't give you an exact depth and width.

Q. They were originally sixty feet wide by eight feet deep?

A. Sixty by eight was the standard oilfield location canal.

Q. All right. So that most of this canal system when originally developed, was developed generally to those specifications?

A. Generally to those specifications.

Q. And, of course, Freshwater Bayou or the Freshwater Canal is larger and the Dewitt was smaller, correct?

A. That's correct.

Q. The nature of the water throughout the canal system is what, sir?

A. Well, it varies from brackish to salty to fresh, depending upon the season of the year, except—now, that

would be in the canals now. It's not the condition of the marsh.

Q. I understand.

A. Because we exercise water management over much of this marsh.

Q. Of course, I'm referring just to the canal system itself.

A. The canal system, it would alternate from brackish to salt to saline, and on to fresher waters, depending upon the season of the year.

Q. In the canal system itself are found what sort of fishes and other aquatic animals?

A. In the canal system, depending there again upon the season of the year—in the fall you have the channel bass or red fish. You also have the speckled trout to come in fall and summer months. They follow the shrimp migration. In addition, you have the garfish. And that's the predominant fish species in the canal, the gar, the speckled trout, and some drum and channel bass, red fish.

Q. Flounder here and there?

A. A few flounder.

Q. All of those species, except the ubiquitous gar are predominantly salt water species, are they not?

A. They would be salt water species. Now, in seasons of the year, you also catch, I might add, the fresh water game fish——you catch the crappie or sac-a-lait, you catch the bass, large mouth black bass, and you catch perch, goggle eye and bream.

Q. How long ago were no trespassing in private canal signs——and signs to that effect placed on and about the canal system itself?

A. How long ago?

Q. Yes.

A. Oh, since the——to my knowledge, the canals have been posted since the '20s, 1920s.

Q. When were citations first given by people in the employ of any of the four (4) corporations I have mentioned?

A. I'd say, continuously since 1926.

Q. Is this the first litigation of this type that any of the four (4) corporations have brought to restrain use of the canals by——(Interrupted)

A. No. There was previous litigation, injunctive——seeking injunctive relief.

Q. One or more others, do you know?

A. There were a number. You mean, in Vermilion Corporation, since the advent of Vermilion Corporation, or ——(Interrupted)

Q. Well, the Vermilion Corporation, Louisiana Fur, or either of the oil companies?

A. No. There was a number of injunctive suits brought over the years. I couldn't quote right now just how many.

Q. Were any of those ever appealed, to your knowledge?

A. I don't know. I couldn't answer that.

OFF THE RECORD.

NO FURTHER QUESTIONS BY MR. HILL.

THE WITNESS WAS TENDERED.

NO QUESTIONS BY MR. SONNIER.

NO QUESTIONS BY MR. ORTEGO.

THE WITNESS WAS EXCUSED.

DEPOSITION ENDED AT 3:45 O'CLOCK, P.M.

DEPOSITION CLOSED.

• • •

REPORTER'S NOTE:

The reporter was provided with the following information by Mr. Charles Sonnier relative to Exhibit "D—4".

"The servitude between Humble Oil and Refining Company and Vermilion Corporation to Vermilion Parish Police Jury for construction and maintenance of Freshwater Canal, Recorded in Book 494, Page 1, dated November 7, 1962.

Also, an auxiliary instrument between the same parties recorded in Book 610 at Page 330, dated April 7, 1967."

CERTIFICATE

STATE OF LOUISIANA

PARISH OF LAFAYETTE

I, Vernelle P. Hebert, General Reporter and Notary Public, duly commissioned and qualified in and for the Parish of Lafayette, Louisiana, do hereby certify that the witness,

JOHN DONOHUE,

by agreement of counsel, was sworn by me, that the foregoing thirty-four pages of typewritten matter constitute a true record of the testimony given by the said witness.

Further, I am not an employee of, or attorney for any of the parties, or otherwise interested in the outcome of this case.

Lafayette, Louisiana, May 14, 1977.

/s/ VERNELLE P. HEBERT

EXHIBITS ATTACHED TO MR. DONOHUE'S DEPOSITION

The Exhibits attached to Mr. Donohue's deposition, consisting primarily of large maps, cannot adequately be reproduced in this Appendix. They appear in the original record of the Vaughn case physically attached to the rear of Mr. Donohue's deposition.

AFFIDA IT IN OPPOSITION

STATE OF LOUISIANA

PARISH OF LAFAYETTE

BEFORE ME, the undersigned authority, Notary Public in and for the aforesaid Parish and State, this 28 day of May, 1977, personally came and appeared:

> NORMAN VAUGHN, FREDDIE BROUSSARD and LARRY J. BROUSSARD, all of the full age of majority and residents of the Parish of Vermilion, Louisiana,

who, on their oaths, declared:

As long as deponents can remember, the Humble Canal System has been used by fishermen, hunters, trappers, sportsmen, and generally anyone who wanted to use same. Broussard's and Hazel's Landings have been public landings and launch ramps on the Humble Canal System for years.

Prior to the development of the Humble Canal System, deponents are aware that various portions of the natural navigable waterway system in the area of Pecan Island, for example, Little Rollover Bayou and Freshwater Bayou, were actually used for purposes of transporting mail, transporting cattle, and transporting people, to and from Pecan Island on various kinds of small vessels. These natural waterways only ceased to be useable for these purposes after Humble developed its artificial waterway system.

AND FURTHER DEPONENTS SAITH NAUGHT.

/s/ NORMAN VAUGHN
Norman Vaughn

/s/ FREDDIE BROUSSARD
Freddie Broussard

/s/ LARRY J. BROUSSARD
Larry J. Broussard

15TH JUDICIAL DISTRICT COURT
NUMBER: 35,948
VERMILION PARISH, LOUISIANA

VERMILION CORPORATION
VERSES
NORMAN VAUGHN

15TH JUDICIAL DISTRICT COURT
NUMBER: 36,983
VERMILION PARISH, LOUISIANA

VERMILION CORPORATION
VERSES
LARRY L. BROUSSARD

15TH JUDICIAL DISTRICT COURT
NUMBER: 36,982
VERMILION PARISH, LOUISIANA

VERMILION CORPORATION
VERSES
FREDDIE BROUSSARD

JUDGMENT

The Motion For Summary Judgment filed herein by Vermilion Corporation came to be heard on May 31, 1977; those present were:

> John K. Hill, Attorney for Defendants
> Norman Vaughn, Larry L. Broussard and
> Freddie Broussard;
>
> Charles S. Sonnier and John E. Ortego,
> Attorneys for Plaintiff Vermilion Corporation.

After reviewing the pleadings, briefs, motions, affidavits, depositions, stipulations, and hearing the arguments of counsel, the Court considering that there is no genuine

issue as to material facts, and that Mover is entitled to a Judgment as a matter of law;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that there be Judgment herein in favor of the Plaintiff, Vermilion Corporation, and against the Defendants, Norman Vaughn, Larry L. Broussard and Freddie Broussard, permanently prohibiting, restraining and enjoining defendants from trespassing on any lands or canals located within the confines of the properties leased by Vermilion Corporation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the costs of these proceedings are to be born by the defendants.

Judgment rendered in Lafayette, Louisiana, on the 7th day of June, 1977; read and signed in open court at Lafayette, Louisiana, on the 22 day of June, 1977.

/s/ ALLEN M. BABINEAUX
Judge

NO. 6258
COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

VERMILION CORPORATION, *Plaintiff-Appellee*
VERSUS
NORMAN VAUGHN, *Defendant-Appellant*

Appeal from the 15th Judicial District Court, Parish of Vermilion, State of Louisiana; Hon. Allen M. Babineaux, District Judge, Presiding.

Before CULPEPPER, DOMENGEAUX, and WATSON, Judges

DOMENGEAUX, JUDGE

OPINION

This suit involves the right of the public to use man-made navigable canals on private property constructed and maintained with private funds.

Tris case was consolidated for trial and appeal with *Vermilion Corporation* v. *Freddie Broussard,* —— So.2d ——, No. 6259, (La. App. 3rd Cir. 1978), and *Vermilion Corporation* v. *Larry J. Broussard,* —— So.2d ——, No. 6260 (La. App. 3rd Cir. 1978).

The issues are the same in these three cases, and will be discussed herein, although separate opinions in each case are being rendered on this day.

Vermilion Corporation, plaintiff-appellee, leases 125,000 acres of land in Vermilion Parish owned by the Exxon Company. The land is traversed by a system of man-made canals. The canals are approximately 60 feet wide and 8 feet deep, are subject to tidal fluctuations, and are navigable in fact. They were constructed with private funds and have been under the continuous control, possession, and supervision of Vermilion Corporation, Exxon Company, and all prior owners since the 1900.

The canal system enters other naturally navigable waterways and lies between the Intracoastal Canal on the north, the Gulf of Mexico on the south, West Cheniere Au Tigre Canal on the east, and Rollover Bayou on the west. The canals are used to facilitate hunting, trapping, and fishing activities, and are also used by the Exxon Company for hydrocarbon exploration and development activities. Vermilion Corporation subleases portions of the land to hunters, trappers, and fishers. The right to use the canals is a part of the lease arrangement.

In order to control access to the land and the canals, over 400 "No Trespassing" signs are posted in various locations. In addition persons have been continuously employed to supervise activities in the canals and on the land. On numerous occasions Vermilion Corporation has prohibited persons from entering and using the property.

The present controversy arose when the defendants-appellants, Norman Vaughn, Freddie Broussard, and Larry J. Broussard, continued to enter the property and travel the canals in order to engage in commercial fishing and shrimping activities without obtaining plaintiff's permission. These individuals disregarded several written warnings issued by plaintiff. Consequently, these suits were filed seeking permanent injunctions enjoining the three defendants from trespassing on the property and in the canals and damages.[1]

After affidavits and a deposition were filed into the record, the corporation moved for summary judgments, which were granted by the trial court. Permanent injunctions against Vaughn and the Broussards were issued. They have perfected devolutive appeals.

---

[1] No proof of damages was introduced in the District Court and no mention of damages is made on appeal. We, therefore, will not discuss the issue.

Defendants contend on appeal that the trial court erred in two respects:

1. In finding that there was no issue of material fact and, therefore, in granting the motions for summary judgment, and

2. In finding that the canal could be controlled by the plaintiff and, theerfore, in granting the permanent injunctions.

I. Summary Judgments

Article 966 of the La. Code of Civil Procedure provides:

> "The plaintiff or defendant in the principal or any incidental action, with or without supporting affidavits, may move for a summary judgment in his favor for all or part of the relief for which he has prayed. The plaintiff's motion may be made at any time after the answer has been filed. The defendant's motion may be made at any time.
>
> The motion for summary judgment shall be served at least ten days before the time specified for the hearing. The adverse party may serve opposing affidavits prior to the day of the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law."

In the present case the parties are in agreement on all relevant facts that are genuinely material to this case and upon which a judgment can be rendered. There is no question that the canals are navigable and were built and maintained with private funds on private property. It is not contested that defendants did engage in fishing and shrimping activities in the canals without permission.

Defendants contend, however, that there is a fact in dispute which is genuinely material to this litigation and that summary judgment was improper. They claim that plaintiff's system of artificial waterways destroyed the navigability of surrounding natural waterways. They argue that this is material because, if true, the court could conclude that the system of artificial waterways was substituted for the pre-existing natural system of navigablet waterways. If such a conclusion were reached, the canals would not be private and could not be privately controlled under state and federal law.

We do not agree. A similar argument was raised in *Ilhenny* v. *Broussard*, 172 La. 895, 135 So. 669 (1931), the facts of which are almost the same as in the present case. The plaintiff in that case, E. A. McIlhenny, constructed a private canal on his property. The defendant, Broussard, continued to use this canal without McIlhenny's permission McIlhenny sought to enjoin Broussard from using his private waterway. The contention was made that the waters from a natural canal were diverted by the man-made waterway and that therefore the man-made waterway was substituted for the natural waterway. The Louisiana Supreme Court rejected the argument stating that the diversion of water from a natural channel by a private man-made waterway does not give rise to a right of the public to use the man-made waterway.[2]

Defendants also contend that this litigation is too important to be disposed of by summary judgment. We fail to see the validity of this argument. Simply because there is no issue of material fact does not mean that the courts will not give a case full and complete treatment. Summary judgment merely avoids a full trial where the need does

[2] *See also, National Audubon Society* v. *White*, 302 So.2d 660 (La. App. • • •

not exist. The effect of a case on Louisiana law is not a valid reason for denying a party's right to summary judgment.

We therefore find no error on the part of the trial court in granting summary judgment in favor of plaintiff.

II. The Injunctions

Defendants contend that the injunctions should not have been granted as a matter of state and federal law. They argue that under La.R.S. 14:97 [3] and under 33 USCA Sec. 403 [4] (§ 10 of the Rivers and Harbors Act) a private individual may not exert dominion over a navigable waterway.

[3] § 97. Simple obstruction of a highway of commerce

Simple obstruction of a highway of commerce is the international or criminally negligent placing of anything or performance of any act on any railroad, navigable waterway, road, highway, thoroughfare or runway of an airport, which will render movement thereon more difficult.

Whoever commits the crime of simple obstruction of a highway of commerce shall be fined not more than two hundred dollars, or imprisoned for not more than six months, or both.

[4] § 403. Obstruction of navigable waters generally; wharves; piers, etc.; excavations and filling in

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same.

With regard to state law, this court discussed the application of La.R.S. 14:97 to a private canal in *National Audubon Society* v. *White,* 302 So.2d 660 (La. App. 3rd Cir. 1974), writ denied 305 So.2d 542 (La. 1975), a case which defendants contend was erroneous and should be overruled.

The facts of *Audubon* mirror those in the present *copy illegible.* In that case a private canal was constructed in 1912 by *illegible* McIlhenny on his property in Vermilion Parish. The canal, *illegible* was the same canal involved in *Ilhenny* v. *Broussard, supra,* was navigable and connected with Vermilion Bay. In 1924 a portion of the land, including a part of the canal, was donated to the National Audubon Society. That organization used the property to operate the Paul J. Rainey Wildlife Sanctuary. The Audubon Society maintained their portion of the McIlhenny canal with its own funds. Access to the canal was restricted by the Audubon Society as it was restricted prior to the donation. The defendant in that case, Joseph White, used the canal without permission for fifty years to haul cattle, cotton, vegetables, and fruit to the market. In 1971 and 1972 he was notified by the Audubon Society that he could no longer use the canal. These notices were disregarded and suit for a permanent injunction to enjoin him from using the canal followed.

This court granted the injunction and held that a canal built entirely on private property with private funds for private purposes is a private thing. White contended that a landowner was prohibited from obstructing any navigable waterway, regardless of whether it was constructed with private funds, by virtue of La. R.S. 14:97, as applied by the Supreme Court in *Discon* v. *Saray, Inc.,* 262 La. 997, 265 So.2d 765 (1972), and the Fourth Circuit in *D'Albora* v. *Garcia,* 144 So.2o 911 (La. App. 4th Cir. 1962).

In *Discon,* landowners whose property bordered on a navigable canal dedicated for the use of the property owners, sought to enjoin another landowner from obstructing a portion of the canal. The Supreme Court concluded that plaintiffs were entitled to injunctive relief under La. R.S. 14:97. In *D'Albora* an injunction was sought to enjoin the owner of land from restricting passage on a navigable canal running through his property. The canal was dug by the State of Louisiana to obtain dirt for the construction of a highway. The Fourth Circuit affirmed the action of the trial court in granting the injunction on the basis of La. R.S. 14:97.

We distinguished *Discon* and *D'Albora* in *Audubon* on the basis that the canals in those cases were either built with public funds or involved a dedicated right of way. We held that La. R.S. 14:97 was inapplicable to a private canal which was not part of the public domain or was not dedicated to the public use, stating the following:

> "We distinguish the D'Albora and Discon cases from the instant suit, because in each of those cases the canal was either a part of the public domain or it had been dedicated for use by the owners of property in the subdivision in which the canal was located.
>
> We have concluded that LSA-R.S. 14:97 does not apply to a privately owned canal, even though it may be navigable. We agree with the views expressed by Professor A. N. Yiannopoulos, in discussing the case of Discon v. Saray, Inc., supra, where he stated:
>
> > 'The majority opinion necessarily rests on the assumption that the canal in question was burdened with a servitude of public use. *Indeed, it would be inconceivable to apply article 97 of the Criminal Code to a strictly private waterway.* The majority proceeded on the idea that this article was applicable because the canal was navigable, and, therefore, was burdened with a servitude of public use; in the alternative, that the canal was

burdned with a servitude of public use by virtue of dedication. *No one, however, should be prepared to accept the proposition that all navigable waterways in Louisiana are subject to public use merely by virtue of the fact they are navigable. A privately owned canal, though navigable in fact, may not be subject to public use, for the same reasons that a private road, though used by commercial traffic, may not be subject to public use. Thus, the disposition of the case would be correct only if the canal in question had been dedicated to public use.'* (Emphasis added)"

302 So.2d 660, 667-668.

We are convinced that the decision of *National Audubon Society* v. *White* was correct and apply it to this case. We hold that a canal on private property constructed and maintained with private funds and used for private purposes is a private canal subject to private control.

With regard to federal law, defendants have cited several federal cases[5] for the proposition that under 33 USCA Section 403, private individuals cannot control navigable waterways.

We have examined all of the federal cases and found them completely distinguishable from the present litigation. The cited cases involved situations where the United

[5] *United States* v. *Republic Steel Corp.*, 362 U.S. 482 (1960); *United tSates* v. *Twin City Power Company*, 350 U.S. 222 (1956); *United States* v. *Willow River Power Company*, 324 U.S. 499 (1945); *United States* v. *Appalachian Electric Power Company*, 311 U.S. 377 (1940); *United States* v. *Sexton Cove Estates, Inc.*, 389 F.Supp. 602 (S.D.Fla. 1975), affirmed in part, reversed in part, 526 F. 2d 1293 (5th Cir. 1976); *United States* v. *Cannon*, 363 F. Supp. 812 (D.Del. 1973); *United States* v. *Underwood*, 344 F. Supp. 486 (M.D.Fla. 1972); *United States* v. *412.715 Acres*, 53 F. Supp. 143 (N.D. Calif. 1943).

States was either seeking to expropriate private property or seeking to prevent the impairment of naturally navigable waterways.

In any event, we fail to see how 33 USCA Section 403 would forbid a landowner from prohibiting the general public from using his private canal. The statute grants authority to the Chief of Engineers and the Secretary of the Army to control waterways, but it does not grant individuals the unrestricted right to use a privately owned navigable canal. Our research has revealed the case of *United States* v. *Kaiser-Aetna*, 408 F. Supp. 42 (D.Ha. 1976), in which the United States attempted to use the same legislation to force Kaiser-Aetna to open a private marina in Hawaii to the public. The marina was originally a lagoon, Kuapa Pond, which was used as a fishing spot by the Hawaiian natives. The lagoon connected with Maunalua Bay, a navigable waterway. Under Hawaiian property law there was no question that the fish pond was private property. Kaiser-Aetna acquired interests in the pond and surrounding land. It developed a subdivision and transformed the fish pond into a marina. Use of the marina was restricted and all commercial vessels were excluded.

The federal court recognized the regulatory power of the federal government under its admiralty powers but it refused to find that the United States could appropriate the waterway to public use without reasonable compensation. The Court stated:

". . . [P]rivate 'fast' lands and waters when made navigable by improvements or which could be made navigable are subject to Congressional regulation. Nevertheless while Congress may provide for the improvement and regulation of navigation, and take necessary action to prevent interference or obstruction to navigation, it cannot impose a *public* navigation servitude upon such a privately constructed waterway

without paying a reasonable compensation for the use thereof.

Here then, since Kaupa Pond has been transformed into navigable waters used in commerce, the marina has therefore become subject to regulation by Congress and within admiralty jurisdiction. It does not follow, however, that the United States can, without payment, appropriate those waters for *public* use and deprive the defendants of their investment or any return on it." [Footnote omitted]

408 F. Supp. 42, 54.

If the public has no right of use on a natural waterway made navigable by private funds under federal law, then *a fortiori* it has no right of use on an artificial navigable waterway constructed with private funds.

Thus, under state and federal law a canal on private property constructed and maintained with private funds for private purposes is a private canal, the use of which can be restricted by the landowner or his assigns. The injunctions in these cases in favor of the landowner's lessee was proper.

For the above reasons we affirm the judgment of the District Court. All costs are to be assessed against the defendant-appellant.

AFFIRMED.